



Michigan Supreme Court
State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, MI 48909
Phone: (517) 373-0130
John D. Ferry, Jr., State Court Administrator

DATE: July 7, 2004

TO: Probate Judges
cc: Probate Registers and Court Administrators

FROM: John D. Ferry, Jr.

RE: SCAO Administrative Memorandum 2004-08
Rescission of Administrative Order 1995-2, Modification of MCR 2.119, and
Revised Probate Court Fee and Distribution Schedule

MCR 2.119 was amended effective October 1, 2003, with the new fee schedules that went into effect on that date. As of March 23, 2004, the Michigan Supreme Court rescinded Administrative Order 1995-2. The result of the amendment of MCR 2.119 and the rescission of Administrative Order 1995-2 necessitated the following revisions to the Probate Court Fee and Distribution Schedule:

- Where a petition/application requests appointment of a special personal representative on the same petition/application for a full personal representative, the previously charged additional fee of \$20 can no longer be charged.
- Where a temporary guardian is requested on the same petition for full or limited guardian, the previously charged additional fee of \$20 can no longer be charged.
- Where a temporary conservator is requested on the same petition for conservator or protective order, the previously charged additional fee of \$20 can no longer be charged.
- Courts no longer are required to provide the first certified copy of Letters of Authority to the fiduciary or the fiduciary's attorney unless the proceeding occurs in the family division of the circuit court under its ancillary jurisdiction (MCL 600.1031).

MCR 2.119(G) was amended to remove the statutory references which limited the rule's application to circuit and district court filings. The rule now applies to all actions in all courts where a motion fee is required. MCL 600.880b(1) is the probate court statutory reference for motion fees.

MCL 600.880b(1) provides, "Except as otherwise provided by law, after the commencement of a civil action or proceeding in the probate court, a party filing a motion, petition, account, objection, or claim shall pay a \$20.00 motion fee to the probate register."

MCR 2.119(G) provides, “The following provisions apply to actions in which a motion fee is required: (1) A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled “motion,” “petition,” “application,” or otherwise. (2) The clerk shall charge a **single motion fee for all motions filed at the same time in an action regardless of the number of separately captioned documents filed** or the number of distinct or alternative requests for relief included in the motions. (3) A motion fee may **not** be charged: (a) in criminal cases; (b) for a notice of settlement of a proposed judgment or order under MCR 2.602(B); (c) for a request for an order waving fees under MCR 2.002 or MCL 600.2529(4) or MCL 600.8371(6); **(d) if the motion is filed at the same time as another document in the same action as to which a fee is required**; or (e) for entry of an uncontested order under subrule (D). [Emphasis added]

A motion is defined as “An application made to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant.”¹ Although MCL 600.880b(1) refers to the filing fee for an account as a motion fee, MCR 2.119(G) does not apply to the filing of an account since an order is not requested. But, if the fiduciary requests allowance of the account or an order approving fees, MCR 2.119(G) applies to the filing of those documents. If they are filed at the same time as the account, only one fee may be charged for all three documents.

Administrative Order 1995-2 (AO 1995-2) provided the authority to charge a filing fee for each document filed in probate court regardless of the number of filings. It also provided the authority to charge an additional fee when a request was made for appointment of a special personal representative, temporary guardian, or temporary conservator when the request was made on the same application or petition as the request for appointment of a personal representative, guardian, or conservator.

AO 1995-2 was also the authority to provide the first certified copy of Letters of Authority to the fiduciary or the fiduciary’s attorney upon request. The statutory authority for this requirement is MCL 600.1031, and it applies only to ancillary proceedings under MCL 600.1021(2) in the family division of circuit court. MCL 600.2546 provides, “Except as otherwise provided by law, in the circuit court, district court, or probate court, for all certified copies, and exemplifications of records, pleadings and proceedings furnished on request, where no special provision is otherwise made, the fee is \$10.00 plus \$1.00 per page.”

The new Probate Court Fee and Distribution Schedule can be accessed on our website at: <http://courts.michigan.gov/scao/resources/other/pfee.pdf>.

If you have any questions regarding this information, please contact Jean A. Mahjoory at mahjooryj@courts.mi.gov or 517-373-3769.

¹ Black’s Law Dictionary, 5th Ed.